IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 22569 of 2004

Between:

M/s. Sagar Grandhi Exports (P) Limited, Singaraya Konda, Prakasham District rep. by its Authorised Signatory Mr. M.S. Murthy.

.... PETITIONER

AND

1 The Commercial Tax Officer No. II, Ongole, Prakasham District.
2 The Secretary, Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad.
3 Government of Andhra Pradesh, Rep. by its Secretary, Revenue CT -II Dept., Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in insisting the pre-deposit of the balance 37 1/2% disputed tax for maintaining the appeal in the light of the memo issued by the government in Memo No. 23559/CT II(1)/2004-1 dt. 16-10-2004 as illegal, arbitrary and without authority of law and declare that the petitioner need not deposit the balance disputed tax of 37 1/2% for maintaining the appeal and

direct the 2nd respondent to number the appeals of the petitioner in AR No. 1154 of 2004 for the Assessment year 2002-2003 and 1155 of 2004 for the Assessment Year 2003-2004 without insisting proof of payment of balance disputed tax and place the same before the Hon'ble Sales Tax Appellate Tribunal for admission and pass such other order or orders

Counsel for the Petitioner: MR.BHASKAR REDDY VEMIREDDY

Counsel for the Respondent Nos.1&2: SPL. GP FOR COMMERCIAL TAXES

The Court made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed aggrieved by the order of the 2nd respondent- Sales Tax Appellate Tribunal, refusing to admit the appeals. It is the statutory requirement that while filing the appeal, 50% of the demanded tax has to be deposited so as to get the appeal admitted, but in the instant case, the amount has not been deposited, therefore, objection was taken by the Tribunal in admitting the appeal.

2. Learned counsel for the petitioner now submits that the Government itself issued Memo dated 16.10.2004 clarifying that since the liquid nitrogen is not used for air conditioning or refrigeration, entry tax need not be levied under Section 3 of the A.P. Tax on Entry of Goods into Local Areas Act, 2001. In view of this, no purpose would be served by depositing 50% of the demanded tax. Hence, he submits that the order

of the objection taken by the Tribunal is illegal and liable to be set aside.

3. Learned Government Pleader submits that the requirement under statute is once appeal is filed, it should be entertained only when 50% of the disputed tax is deposited. In the instant case, the petitioner has not deposited 50% of the disputed tax, therefore, the order of objection cannot be said to be illegal.

4. We have heard the learned counsel for the petitioner and learned Government Pleader.

5. In view of the Memo, dated 16.10.2004, the appeal has to be disposed of one way or the other. But however, since the requirement is to be complied with and keeping in view the facts and circumstances of this case, we direct the petitioner to furnish bank guarantee for the balance amount in favour of 1st respondent-assessing authority within a period of one week and thereafter, the 2nd respondent-Tribunal shall hear and dispose of the appeal within a period of two weeks thereafter keeping in view the order, dated 16.10.2004, passed by the Government referred to supra.

6. With the direction indicated above, the Writ Petition is disposed of. No costs.

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G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 24.03.2005

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To

1 The Commercial Tax Officer No. II, Ongole, Prakasham District.
2 The Secretary, Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad.
3 The Secretary, Government of Andhra Pradesh,
Revenue CT -II Dept., Secretariat, Hyderabad.

4 2 CCs to the GP for Commercial Taxes.

5 2 CD copies

6 1 CC to MR.BHASKAR REDDY VEMIREDDY (OUT)